

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF PUERTO RICO**

IN RE:

A+ HC HOLDING, INC.

Debtor

CASE NO. 11-01428(BKT)

CHAPTER 11

**JOINT STIPULATION ON THE USE OF CASH COLLATERAL AND ADEQUATE
PROTECTION**

COME NOW Debtor, A+ HC Holding, Inc., (“Debtor” or “A+”) and Banco Popular de Puerto Rico (“BPPR”), as the owner as of April 30, 2010 of all credit relationships among the Debtor, its affiliates and guarantors, and Westernbank Puerto Rico, each by their undersigned counsel, and respectfully submit this Stipulation on the Use of Cash Collateral and Adequate Protection (the “Stipulation”).

Preliminary Statement

After substantial negotiations, the Debtor and BPPR have agreed to the Stipulation contained herein, whereby, among other things, BPPR consents to the Debtor’s limited use of certain of BPPR’s cash collateral to satisfy certain operating expenses solely under and pursuant to the terms of the Stipulation and the adequate protection provided herein. Debtor has no debtor-in-possession financing and, thus, requires the use of cash collateral to satisfy operating expenses pending the approval and consummation of the sale of substantially all of its saleable assets. Therefore, BPPR and Debtor respectfully submit that the terms of this Stipulation should be promptly approved as they are critical and necessary to provide and assure the continuance of Debtor’s limited business activities directed to

Debtor's compliance with local and federal laws and regulations and making feasible the preservation, disposition and maximization of its assets.

Jurisdiction and Venue

1. This Court has jurisdiction over this Motion under 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding within the scope of 28 U.S.C. § 157(b)(2).

2. Venue of this proceeding and of the Motion is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

3. The statutory basis for the relief requested herein are sections 105(a), 361, 362, 363, 364, 365, 1107 and 1108 of the Bankruptcy Code, Fed. R. Bank. P. 4001(b) and Local Bankruptcy Rule 4001-2.

Background

A. The Bankruptcy Filing:

4. On January 15, 2010, the Bankruptcy Court, in the consolidated bankruptcy case of In re PMC Marketing Corp. (“PMC”), Case No. 09-02048-BKT (the “PMC Bankruptcy Case”), authorized the sale of certain of PMC’s assets to Debtor free and clear of all liens, claims and interests. See, Docket No. 508 and 509 in the PMC Bankruptcy Case (the “Sale Order”).

5. Pursuant to the Sale Order (Docket No. 508), Debtor acquired the following assets from the PMC:

- a. Pharmacy locations Store 2 (La Rambla Shopping Center, Ponce), Store 5 (Campo Rico, Plaza Carolina), Store 10 (Caparra, Guaynabo), Store 11 (Santa Rosa Mall, Bayamón), Store 12 (Villa Blanca Shopping Center, Caguas), Store 14 (Victory Shopping Center, Bayamón), Store 18 (Plaza

de Pueblo, Cataño), Store 19 (Triumph Plaza, Humacao), Store 22 (Road PR 54, Guayama), Store 27 (Plaza del Mercado, Rio Piedras), Store 28 (Trujillo Alto Plaza, Trujillo Alto), Store 29 (Guaynabo Shopping Center, Guaynabo), Store 31 (Aguadilla Shopping Center, Aguadilla), Store 37 (Levittown, Toa Baja), Store 39 (Mayaguez office and Medical Center, Mayaguez), Store 42 (Camino Alejandrino, San Juan), Amal 44 (Calle Europa, Santurce), Store 45 (Caparra Gallery, Guaynabo), Store 59 (Berrios Shopping Center, Cidra), Store 60 (San Sebastian Plaza, San Sebastian), Store 61 (Los Colobos Shopping Center, Carolina), and Store 80 (Prime Outlet Mall, Barceloneta) and certain other assets of the Debtor located as such pharmacies.

- b. The inventories and equipment located at pharmacy locations Store 4 (Mayaguez Shopping Center, Mayaguez), Store 7 (Santa Maria Shopping Center, Ponce), Store 8 (Centro del Sur Shopping Center, Ponce), Store 16 (Miramar #540, Arecibo) Store 17 (Valle Real Shopping Center, Ponce), Store 36 (Yauco Plaza, Yauco), Store 38 (Dorado Shopping Center, Dorado), Store 41 (Berwind Shopping Center, San Juan), Store 56 (Corozal Plaza, Corozal), Store 65 (Bayamón Oeste Shopping Center, Bayamón) and Store 75 (Valle Arriba Carolina)
- c. The stores fixtures located at Store 59 (Berrios Shopping Center, Cidra), Store 65 (Bayamón Oeste Shopping Center, Bayamón) and Store 75 (Valle Arriba, Carolina)
- d. All assets located at PMC's administrative offices including equipment,

fixtures, motor vehicles, brands and trademarks, as well as certain real properties, as listed in Debtor's Schedule A.

6. On February 3, 2010, the sale to Debtor of PMC's assets closed.

7. On February 24, 2011, Debtor filed a voluntary petition for relief under the provisions of 11 U.S.C. Chapter 11, and as of that date has been managing its affairs as a debtor-in-possession pursuant to 11 U.S.C. §§1107.

8. No Committee of Creditors or Trustee has been appointed in this case.

B. The Loan Documents

9. Prior to the Petition Date, and to finance the purchase of the PMC assets described above to Debtor and to provide working capital to debtor for the operation of the pharmacies purchased thereby from PMC, Debtor and Westernbank Puerto Rico ("Westernbank") entered into a Loan and Security Agreement dated February 3, 2010 (the "Loan Agreement") (collectively with any other agreements, documents and instruments referred to in the Loan Agreement at any time executed and/or delivered in connection therewith or related thereto, the "Financing Agreements").

10. To secure Debtor's obligations under the Financing Agreements, Debtor granted to Westernbank, through the Financing Agreements, a first priority security interest over substantially all of Debtor's assets (collectively, the "Collateral").¹

¹ The Collateral includes: (a) all Accounts; (b) all present and future general intangibles, including all Intellectual Property; (c) all Inventory; (d) all Equipment; (e) all chattel paper, including all tangible and electronic chattel paper; (f) all instruments, including all promissory notes; (g) all documents; (h) all deposit accounts; (i) all letters of credit, banker's acceptances and similar instruments and including all letters of credit rights; (j) all supporting obligations and all present and future liens, security interests, rights, remedies, title and interest in, to and in respect of Receivables and other Collateral, including (i) rights and remedies under or relating to guaranties, contracts of suretyship, letters of credit and credit and other insurance related to the Collateral, (ii) rights of stoppage in transit, replevin, repossession, reclamation and other rights and remedies of an unpaid vendor, lienor or secured party, (iii) goods described in invoices, documents, contracts or instruments with respect to, or otherwise representing or evidencing, Receivables or other collateral, including returned, repossessed and reclaimed goods, and (iv) deposits by and property of account debtors or other persons securing the obligations of account debtors; (k) all (i)

11. Westernbank properly perfected its security interests granted by Debtor under the Financing Agreements.

12. As inducement for, and in consideration of Westernbank making loans and advances and providing other financial accommodations to Debtor under the Financing Agreements (and, to secure and satisfy the obligations thereunder), Debtor (among others) executed the following additional documents (each as may have been subsequently amended or modified): (a) Revolving Note; (b) Term Loan Agreement; (c) Term Loan Promissory Note; (d) Assumed Liabilities, Guaranty and Cross-Default and Cross-Collateral Agreement; (e) Assignment of Lease Agreements; (f) Personal and Corporate Guarantees; (g) Collateral Assignment of Rent and Subleases; (h) Collateral Assignment of Lease Agreement; (i) Cross-Collateral and Cross-Default Agreement; (j) Deeds of Constitution of Mortgage; (k) Deposit Account Control Agreement; (l) Capital Stock Shares Endorsements; (m) Landlord's Estoppel Certificates; (n) Membership Interest Pledge Agreement; (o) Mortgage Notes Pledge Agreement; (p) Post Closing Obligations Agreement; (q) Assignment of Life Insurance Proceeds; (r) Stock Pledge Agreement; (s) Subordination Agreement; (t) UCC -1 PR Financing Statements; (u) and any other agreements, financing statements, documents and instruments at any time executed and/or delivered in connection with the foregoing documents or related thereto (collectively with the Financing Agreements, the "Loan Documents").

12. On April 30, 2010, Westernbank was closed by the Office of the Commissioner

investment property (including securities, whether certified or uncertificated, securities accounts, security entitlements, commodity contracts or commodity accounts) and (ii) monies, credit balances, deposits and other property of Debtor, now or hereafter held or received by or in transit to Lender or at any other depository or other institution from or for the account of Debtor whether for safekeeping, pledge, custody, transmission, collection or otherwise; (l) all commercial tort claims, including, without limitation, those identified in the Information Certificate; (m) to the extent not otherwise described above, all Receivables and all goods; (n) all Records; (o) the leases of all premises leased by Debtor (including an assignment thereof); (p) all motor vehicles; and (q) pharmacy scripts (r) credit cards receivables; (s) all products and proceeds of the foregoing in any form, including insurance proceeds and policies and all claims against third parties for loss or damage to or otherwise with respect to any of the foregoing items.

of Financial Institutions of the Commonwealth of Puerto Rico, which appointed the Federal Deposit Insurance Corporation (FDIC) as receiver. Furthermore, on that date, the FDIC entered into a purchase and assumption agreement with Banco Popular de Puerto Rico to assume all of the deposits of Westernbank. In addition to assuming all of the deposits, Banco Popular de Puerto Rico also agreed to purchase approximately \$9.39 billion of assets.

13. Among such purchased assets are all credit relationships relating to Debtor, its related affiliates and guarantors.

14. Accordingly, as of the Petition Date, under the Financing Agreements, Debtor had incurred obligations to Banco Popular that amount to approximately \$23,970,135.85 and that are secured by the Collateral, among others (the “Loans”).

Stipulation

15 The Debtor requires the use of the cash Collateral to pay (among other things) present operating expenses in order to preserve the value of its assets pending the sale of substantially thereof. Therefore, Debtor has requested from BPPR and BPPR has agreed and authorized Debtor to use certain of BPPR’s Cash Collateral during the Bankruptcy Case. BPPR is willing to authorize such use solely under, and in reliance upon, the terms and conditions and adequate protection set forth herein.

16. Section 363(c)(2) of the Bankruptcy Code provides that the Debtor may not use, sell or lease cash collateral unless: “(a) each entity that has an interest in such cash collateral consents; or (b) the court, after notice and hearing, authorizes such use, sale, or lease in accordance with the provisions of this section.” 11 U.S.C. §363(c)(2).

17. Pursuant to Section 361 of the Bankruptcy Code, Debtor may provide adequate protection by making cash payments, providing additional or replacement liens, or other manners.

18. Debtor and BPPR have negotiated and agreed upon the terms of adequate protection that will entitle Debtor to use BPPR's cash Collateral on a consensual basis, as detailed and pursuant to the terms described below:

- **Authorized Use of Cash Collateral.** Pursuant to this Stipulation, Debtor shall be authorized to use BPPR's cash collateral solely to satisfy the permitted expenditures detailed and described and at the times set forth (the "Permitted Expenditures") in the budget (the "Budget", attached as **Exhibit A**). The total authorized use of cash collateral is as stated in the Budget (the "Authorized Cash Collateral") and for the period commencing on the Petition Date and ending on August 31, 2011 (the "Stipulation End Date"). BPPR's consent to use of cash Collateral and Debtor's right to use the cash Collateral shall terminate automatically on the Stipulation End Date - provided, however, that the adequate protection provisions, representations, and protections contained in the Stipulation and granted to BPPR shall continue in full force and effect until all of Debtor's obligations under the Loan Documents have been satisfied in full. Further, nothing contained herein shall obligate BPPR to extend any use of the cash Collateral beyond the Authorized Cash Collateral or the Stipulation End Date. Finally, Debtor is not authorized to use cash Collateral beyond the Authorized Cash Collateral, for any expenditure other than the Permitted Expenditures, nor beyond the Stipulation End Date, without the prior written consent of BPPR.
- **Adequate Protection - Replacement Liens.** Pursuant to Sections 361 and 363 of the Bankruptcy Code, as adequate protection for BPPR, Debtor hereby grants to BPPR a replacement lien and a post-petition security interest on all of the assets and Collateral acquired by Debtor on and after the Petition Date, as provided in the Loan Documents, as

entered into pre-petition, to the same extent and priority, and on the same types of property, as BPPR's liens and security interests in the pre-petition Collateral (the "Replacement Liens"). The Replacement Liens shall be deemed effective and perfected as of the Petition Date without the need of the execution or filing by Debtor or BPPR of any additional security agreements, pledge agreements, financing statements or other agreements.

- **Additional Adequate Protection – Super-Priority Claim.** Pursuant to Sections 361, 363 and 507(b) of the Bankruptcy Code, as additional adequate protection, BPPR is hereby granted a super-priority claim in an amount equal to any diminution in value of the pre-petition Collateral, including, without limitation, BPPR's interest in the cash Collateral, resulting from Debtor's use of the pre-petition Collateral and cash Collateral and the imposition of the automatic stay, having priority over all administrative expenses specified in Sections 503(b) and 507 of the Bankruptcy Code (the "Super-Priority Claim").
- **Additional Adequate Protection – Reporting Rights.** Pursuant to Sections 361 of the Bankruptcy Code, as additional adequate protection, Debtor shall submit to BPPR bi-weekly reports detailing: (a) the amount, aging, and description of all of Debtor's accounts receivable, inventory and other cash collateral; (b) the amount of cash collateral collected and/or used to satisfy Permitted Expenses; and (c) liquidation efforts (e.g. solicitation of bids, offers, discussions with potential acquirers, etc.) (collectively, the "Reports"). The Reports shall be submitted bi-weekly or every other Monday, detailing the respective activities as of the end of the prior week.
- **Additional Adequate Protection - Sale Proceeds.** As additional adequate protection, Debtor hereby agrees that upon the consummation of any sale of substantially all or any of

Debtor's assets the proceeds of such sale shall be paid immediately and indefeasibly to BPPR for its benefit at the closing of such sale(s) in an amount equivalent to the outstanding balance of the Loans, plus any post-petition interest and/or charges that may have accrued in accordance with the Bankruptcy Code.

- **Additional Adequate Protection - Section 506(c) Waiver.** As additional adequate protection, Debtor hereby covenants and agrees to waive any and all rights under Section 506(c) of the Bankruptcy Code as to any of the Collateral (the "506(c) Waiver").
- **Additional Adequate Protection – DIP Accounts.** As additional adequate protection, Debtor will grant BPPR access to monitor its debtor-in-possession accounts and the payments and deposits made therein or therefrom.
- **Additional Adequate Protection – Cross-Collateral.** As additional adequate protection, the post-petition Collateral under the Replacement Liens and the pre-petition Collateral shall all serve as cross-Collateral for the Loans and any and all other amounts disbursed by BPPR under the Financing Agreements.
- **Additional Adequate Protection - Credit Bid.** BPPR shall have the right to credit bid the indebtedness owed thereto under the Loan Documents, in whole or in part, in connection with any sale or disposition of debtor's assets (whether or not such asset sale or disposition is undertaken or proposed under or pursuant to the terms of any consensual or nonconsensual (including under section 1129(b)(2)(A)(i), (ii) and/or (iii) of the Bankruptcy Code) chapter 11 plan of liquidation of or for Debtor, whether proposed by Debtor or any other party, by motion under section 363 of the Bankruptcy Code, or otherwise under applicable law) and Debtor hereby waives all rights to oppose such credit bid rights of BPPR.

- **Ratification of Loan Documents.** Debtor hereby consents: (i) to the transaction contemplated herein and acknowledges, reaffirms, and ratifies all security interests granted and liens constituted pursuant to the Loan Documents as security for the payment and performance of all of Debtor's obligations under the Loan Documents and their first priority rank; (ii) acknowledges and agrees that the guarantees (and all security therefore) contained in the Loan Documents are, and shall continue to remain, in full force and effect after giving effect to this Stipulation; and (iii) ratifies the Financing Agreements, the guarantees and the other Loan Documents.
- **Ratification of Obligations.** Debtor acknowledges, represents, covenants, and agrees with BPPR that (i) Debtor's obligation to pay in full the outstanding balance of principal of the Loans and any other sums due to BPPR including, without limitation, accrued interest under the Financing Agreements is valid, binding and enforceable in all respects; and (ii) the Debtor's obligations under the Financing Agreements, as well as any and all of their other obligations under any of the other Loan Documents (including, without limitation, the guarantees and this Stipulation) are valid, binding and enforceable in all respects.
- **Application of Payments.** Debtor hereby agrees, affirms and acknowledges that BPPR shall have the sole discretion to determine how, whether, and when to apply any and all payments on obligations relating to the Loan Documents received from, or made by or on behalf of, Debtor after the Petition Date (the "Post-Petition Payments")¹. Debtor hereby agrees, affirms, acknowledges, and consents that BPPR may, in its sole discretion, apply any and all Post-Petition Payments to any of the following: (a) any

¹ While no adequate protection payments are contemplated to BPPR under this Stipulation at this time, this section shall apply to any Post-Petition Payment made to BPPR be it through a sale, plan or other event.

- portion of the amounts due for the Loans; (b) any amount due, incurred, or accrued under any of the Loan Documents after the Petition Date, including, but not limited to, post-petition interest and/or attorneys' fees (to the extent allowed by the Bankruptcy Code); and/or (c) as adequate protection under the Bankruptcy Code.
- **Insurance.** Debtor agrees to maintain necessary adequate insurance on all of the Collateral from and after the Petition Date, and to (a) list BPPR as an additional insured and loss payee under the corresponding insurance policies if any, and (b) upon request, provide to BPPR evidence of such insurance (the "Insurance Obligation").
 - **Continuing Obligation.** Debtor's obligation to grant the Replacement Liens, 506(c) Waiver, Super-Priority Claim, and the Insurance Obligation, and all other adequate protection provisions, as Debtor's representations, covenants and obligations under this Stipulation shall: (i) continue in full force and effect until all of Debtor's obligations under the Loan Documents have been satisfied in full; and (ii) be binding upon any successor to Debtor including, but not limited to, any Chapter 11 trustee or any trustee appointed in any Chapter 7 case of Debtor in the event of a conversion.
 - **Reservation of Rights.** Notwithstanding anything to the contrary contained in this Stipulation, BPPR shall have the right to seek any relief it deems necessary or appropriate before this Court including, but not limited to, a motion seeking (a) relief from the automatic stay upon any ground or cause in the event of a change in circumstances; and/or (b) adequate protection in addition to that provided for in this Stipulation in the event of a change in circumstances. Further, if at any time Debtor fails to comply with any of its obligations or representations under any of the terms of this Stipulation, or if at any time the cash Collateral diminishes by ten percent or more in value as per the amounts stated in the Budget, BPPR

shall have the right to: (a) terminate its consent to the use of Cash Collateral; (b) obtain relief from the automatic stay to enforce its rights under the Loan Documents; and (c) seek any further relief it deems appropriate.

- **No Novation.** It is hereby understood and agreed by each of the parties hereto that this Stipulation is not intended to constitute an extinctive novation (“novación extintiva”) of the obligations and undertakings of the parties under any of the Loan Documents, as amended to date. Debtor ratifies, reaffirms, confirms, consents to and acknowledge all the terms, priority and conditions of, security interest, mortgages or liens over the Collateral provided for in the Loan Documents and Debtor’s obligations under such documents.
- **Milestones.** The milestone schedule with which the Debtor shall comply with respect to the sale of substantially all of Debtor’s (the “Sales”), which shall be satisfactory and agreeable to Debtor and BPPR (the “Milestone Schedule”), for the purpose of ensuring the timely pursuit and consummation of the Sales, shall be as follows: (i) on or within seven (7) days of the filing of this Stipulation by the Court, Debtor shall file notices of sale acceptable to BPPR with the Court. Failure to effect the Sales within 25 days from the filing of the notices of sale shall constitute an Event of Default under the Milestone Schedule (as defined below) and under the Stipulation, and shall cause the automatic termination of Debtor’s authorization to use Cash Collateral; provided, that no Event of Default under the Stipulation and no termination of Debtor’s authorization to use Cash Collateral shall occur if the failure to satisfy any milestone in the Milestone Schedule is due solely to unreasonable delay caused by BPPR or the Court’s schedule of hearing dates.

- **Events of Default.** The following shall constitute an event of default and entitle BPPR to exercise all of its remedies and shall cause the automatic termination of Debtor's authorization to use Cash Collateral: (1) any representation, warranty or other written statement to BPPR by Debtor or by an authorized representative on behalf of Debtor proves to have been false or misleading in any material respect when made; or (2) Debtor shall breach any covenant or obligation contained in the Stipulation or fail to comply with or fail to perform any of the terms, conditions or covenants or its obligations set forth in the Stipulation; or (3) Debtor shall challenge in any action the validity or enforceability of any of the Loan Documents, the enforceability of the obligations thereunder, or the perfection or priority of any lien granted to BPPR or any of the Loan Documents ceases to be in full force or effect; or (4) a trustee or an examiner with enlarged powers relating to the operation of Debtor's business (powers beyond those set forth in sections 1106(a)(3) and (a)(4) of the Bankruptcy Code), shall be appointed in the Bankruptcy Case; or (5) any lien on any of the Collateral or super-priority claim which is *pari passu* with or senior to the claims of the BPPR shall be granted or Debtor shall file a motion seeking approval of any such lien or super-priority claim; or (6) the (a) filing by Debtor of a plan of liquidation without the prior written approval of BPPR, or (b) the termination of any of Debtor's exclusive rights under section 1121 of the Bankruptcy Code; or (7) on a cumulative basis, Debtor's actual cash disbursements shall vary from the Budget in excess of ten percent of the amount budgeted, which cumulative variance shall be measured on a weekly basis and subject to a five (5) business day grace period; or (8) the filing of any motion to approve a sale of substantially all or any portion of Debtor's assets

without the prior written approval of BPPR; or (9) Debtor seeking, or the filing of any motion by any other party to obtain, additional or replacement post-petition financing for Debtor; or (10) Debtor's failure to comply with any of its adequate protection obligations to BPPR under the Stipulation; or (11) the Bankruptcy Case shall be dismissed or converted into a chapter 7 case; or (12) the value of the Cash Collateral diminishes on any month by more than ten (10) percent in value from the representations contained in the Budget; or (13) the commencement of any challenge against BPPR's liens, claims, and/or security interests.

- **Effect of Stipulations on Third Parties.** The Stipulation and any admissions, releases and waivers contained herein shall be binding upon Debtor and all other parties in interest. Accordingly, (i) the obligations under the Loan Documents shall constitute allowed claims, not subject to counterclaim, setoff, subordination, recharacterization, defense or avoidance, for all purposes in the bankruptcy case and any subsequent chapter 7 case, (ii) the liens under the Loan Documents on the Collateral shall be deemed to be legal, valid, binding, perfected, not subject to recharacterization, subordination, avoidance or reduction and (iii) the obligations under the Loan Documents, the Collateral and Loans shall not be subject to any other or further challenge by any party in interest, and any such party in interest shall be enjoined from, seeking to exercise the rights of Debtor's estate, including, without limitation, any successor thereto (including, without limitation, any estate representative or a chapter 7 or chapter 11 trustee appointed or elected for Debtor). Nothing in this Stipulation vests or confers on any Person (as defined in the

Bankruptcy Code) standing or authority to pursue any cause of action belonging to Debtor or its estate.

Request for Emergency Determination

19. The success or failure of the Debtor's case rests in significant part on the Debtor having the access to use the cash collateral to preserve its assets pending the sale thereof and the formulation of a liquidation plan. Given the importance of the requested relief to Debtor and its estate, Debtor and BPPR request that this Court consider this Stipulation and approve the same on an emergency basis.

20. No previous application for the relief sought herein has been made to the Court.

21. Debtor and BPPR have carefully examined the matter object of the Motion and have concluded that there is a true need for it to be heard on an emergency basis. Debtor has not created the need for this emergency relief through any lack of due diligence.

Notice

Notice of this Motion has been electronically provided by the CM/ECF system to: the **United States Trustee** for the District of Puerto Rico and to all attorneys that have filed a notice of appearance. Copy of this notice will be sent by postage prepaid to those parties listed on Debtor's' List of Creditors Holding the 20 Largest Unsecured Claims, as per attached list.

WHEREFORE, BPPR and Debtor stipulate to the above, and jointly request the Court's approval thereof.

RESPECTFULLY SUBMITTED.

San Juan, Puerto Rico, this 8th day of March, 2011.

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